IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION CIVIL NO. 3:08CV372-RJC-DSC

ROSEMARY B. SCOTT,)
)
Plaintiff,)
)
vs.	,)
) MEMORANDUM AND RECOMMENDATION
	AND ORDER
JPMORGAN CHASE BANK, N.A.,	<u></u>
et. al.,))
,	,)
Defendants.	,)
)
)

THIS MATTER is before the Court on the "Defendants' Joint Motion to Dismiss for Failure to Prosecute ..." (document #8) and "Memorandum ... in Support ..." (document #9), both filed January 29, 2009. The <u>pro se</u> Plaintiff has not filed a response, and the time for filing a brief or otherwise opposing the Motion has long expired.

This matter was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B), and this Motion is now ripe for the Court's consideration.

On August 15, 2008, the Plaintiff filed a one-paragraph Complaint collaterally attacking the Defendants' state court foreclosure proceeding against her home. As the Defendants now assert, and as the docket reflects, since filing her Complaint, the Plaintiff has not participated in this proceeding in any fashion, including failing to appear at the Initial Pretrial Conference on November 12, 2008 as she had been <u>ordered</u> to do. The Plaintiff has also failed to serve any Rule 26(a)(1) initial disclosures or respond to the Defendants' discovery requests.

Federal Rule of Civil Procedure 41(b) provides that "[i]f the plaintiff fails to prosecute or to

comply with these rules or a court order, a defendant may move to dismiss the action ... a dismissal under this subdivision ... operates as an adjudication on the merits." Fed. R. Civ. P. 41(b).

Accordingly, for these reasons, as well as the other reasons stated in the Defendants' memorandum, the undersigned will respectfully recommend that the Defendants' Motion to Dismiss be granted.

III. ORDER

IT IS ORDERED that all further proceedings in this action, including <u>all</u> discovery, are STAYED pending the District Court's ruling on this Memorandum and Recommendation and Order.

IV. RECOMMENDATION

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that the "Defendants' Joint Motion to Dismiss for Failure to Prosecute" (document #8) be **GRANTED** and that the Complaint be **DISMISSED WITH PREJUDICE**.

V. NOTICE OF APPEAL RIGHTS

The parties are hereby advised that, pursuant to 28 U.S.C. §636(b)(1)(c), written objections to the proposed findings of fact and conclusions of law and the recommendation contained in this Memorandum must be filed within ten (10) days after service of same. Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003); Snyder v. Ridenour, 889 F.2d 1363, 1365 (4th Cir. 1989); United States v. Rice, 741 F. Supp. 101, 102 (W.D.N.C. 1990). Failure to file objections to this Memorandum with the District Court constitutes a waiver of the right to de novo review by the District Court. Diamond

v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005); Wells v. Shriners Hosp., 109 F.3d 198, 201 (4th Cir. 1997); Snyder, 889 F.2d at 1365. Moreover, failure to file timely objections will also preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Wells, 109 F.3d at 201; Page, 337 F.3d at 416 n.3; Thomas v. Arn, 474 U.S. 140, 147 (1985); Wright v. Collins, 766 F.2d 841, 845-46 (4th Cir. 1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984).

The Clerk is directed to send copies of this Memorandum and Recommendation and Order to the pro se Plaintiff, to counsel for the Defendants; and to the Honorable Robert J. Conrad, Jr.

SO ORDERED AND RECOMMENDED.

Signed: April 3, 2009

David S. Cayer

United States Magistrate Judge